

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re PHILLIP O. et al., Persons Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

HANNAH D.,

Defendant and Appellant.

D043565

(Super. Ct. Nos. NJ112264A-B)

APPEAL from judgments of the Superior Court of San Diego County, Harry Elias,
Judge. Appeal dismissed.

Hannah D. (Mother) appeals the judgments terminating her parental rights over
Phillip and Kylie O. She contends the court erroneously defined permanency solely in
terms of the adoption preference in the Welfare and Institutions Code (statutory
references are to the Welfare and Institutions Code unless otherwise specified) rather than

applying the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) to protect the children's connection to their tribe. We dismiss the appeal.

BACKGROUND

Mother is enrolled in the Rincon Band of Luiseno Mission Indians (the Tribe) and affiliated with the Cauhilla Band of Mission Indians. (68 Fed. Reg. 68180.) The children's father (Father) is also enrolled in the Tribe. Phillip and Kylie are members of the Tribe and are affiliated with the Cauhilla Band of Mission Indians. Father was incarcerated during much of the trial court proceedings, participated only minimally, and is not a participant in this appeal.

In March 1998, when Phillip was two years old and Kylie was one, the San Diego County Health and Human Services Agency (the Agency) filed dependency petitions because Mother had left them with her own mother, who in turn left them in the care of their 10-year-old aunt, who was also caring for several other children; Phillip and Kylie were dirty, as was their home; their lungs were congested; and Kylie's abdomen was distended.

The children were detained at Polinsky Children's Center (Polinsky), then with a maternal aunt on the Rincon Indian Reservation. Due to the aunt's medical problems, in July 1998 they were removed from her home and detained in a foster home on the Pala Reservation. In August, they were placed with a distant maternal cousin on the Rincon Indian Reservation. In December, they were placed with Mother on a 60-day visit on condition she live with the maternal aunt. The visit ended when Mother left the home in January 1999 and the children were moved back to the cousin's home. In May, the

cousin asked that the children be removed and they were placed with the maternal aunt. In December, the maternal aunt and uncle became the children's guardians. In September 2000, the guardianship was terminated at the aunt and uncle's request due to various family issues. The children were detained in Polinsky then placed with the maternal cousin under a plan of long-term foster care. The cousin requested the children's removal because she was overburdened with family and employment matters, and the children were taken to Polinsky in December.

The children remained at Polinsky until March 2001, when they were placed with non-Indian foster parents (Foster Parents) approved by the Rincon Tribal Council and the Indian Health Clinic's Indian Child Welfare Program. In March 2002, Foster Parents became the children's de facto parents.

In February 2003, Foster Parents expressed a desire to become the children's guardians. They subsequently decided they wanted to adopt. During the course of this case, the Tribe recommended the children remain in long-term foster care with Foster Parents, and both voiced support of and opposition to guardianship at different times, and consistently opposed adoption.

At the December 2003 section 366.26 hearing, the Tribe's counsel asked for a permanent plan of guardianship. Mother's counsel supported this position. The trial court terminated parental rights and selected adoption as the permanent plan. The Tribe has not appealed or participated in this appeal. The children have not appealed and their appellate counsel asks that we affirm the juvenile court's judgment.

DISCUSSION

The Agency has moved to dismiss the appeal, arguing Mother lacks standing to claim, based on ICWA, that the court erred by ordering a permanent plan of adoption rather than guardianship. We agree.

Standing is jurisdictional. Mother cannot raise issues that do not affect her own rights, and must "establish she is a 'party aggrieved' to obtain a review of a ruling on the merits." (*In re Frank L.* (2000) 81 Cal.App.4th 700, 703.) "' . . . For a valid appeal one must be injuriously affected by the court's ruling in an immediate and substantial manner, and *not* as a nominal or remote consequence. . . .'" (*In re Joshua S.* (1986) 186 Cal.App.3d 147, 150, quoting *In re Candy S.* (1985) 176 Cal.App.3d 329, 331, accord, *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 948.) "We liberally construe the issue of standing and resolve doubts in favor of the right to appeal." (*Ibid*; contra, *In re Joshua S.*, *supra*, 186 Cal.App.3d at p. 150.)

In *In re Frank L.*, *supra*, 81 Cal.App.4th 700, the mother appealed an order placing her son with an aunt, arguing that separating him from his siblings was not in his best interests and that he had received ineffective assistance of counsel because he and his siblings were represented by the same attorney. (*Id.* at p. 701.) This court concluded the mother lacked standing, noting "[t]he interest of siblings or other relatives in their relationship with the minor is separate from that of the parent" and the fact that a parent takes a position on an issue affecting the child does not confer standing. (*Id.* at p. 703.) (*In re Frank L.*, *supra*, 81 Cal.App.4th 700 was decided before the enactment of the

sibling relationship exception in section 366.26, subdivision (c)(1)(E), see *In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 950.)

Here, the interests of the Tribe and the children in their relationship with one another are separate from Mother's interests. The fact that she supported the Tribe's request for a permanent plan of guardianship rather than adoption does not change that. She lacks standing to challenge the propriety of the permanent plan under ICWA, an issue that pertains to the Tribe's and the children's interests, not hers. The Tribe has not appealed. The children, through their appellate counsel, request that the judgments be affirmed. Accordingly, we dismiss the appeal.

DISPOSITION

Appeal dismissed.

McINTYRE, J.

WE CONCUR:

BENKE, Acting P. J.

McDONALD, J.